



Texas Environmental Lead Reduction Rules



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Amended: May 10, 1998

Toxic Substances Control Division

Environmental Lead Branch

Texas Department of Health

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TEXAS ENVIRONMENTAL LEAD REDUCTION RULES

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§295.201. GENERAL PROVISIONS.

(a) Purpose. The purpose of these sections is to establish the means to control and minimize public exposure to lead by regulating lead-based paint activities in target housing and child-occupied facilities.

(b) Scope (for the purposes of certification and accreditation).

(1) Rules application. These sections contain procedures and requirements for the accreditation of lead training providers, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities and standards for performing such activities in target housing and, effective June 1, 1998, child-occupied facilities. These sections also require that all lead-based paint activities in target housing and child-occupied facilities be performed by certified individuals.

(2) Exclusions. These sections do not apply to housing for the elderly or persons with disabilities, unless a child who is six years of age or younger resides or is expected to reside in that housing, nor do these sections apply to target housing with zero bedrooms. These sections also do not apply to persons who perform lead activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while the activities are being conducted or a child residing in the building has been identified as having an elevated blood lead level.

(c) Severability. Should any section or subsection in this chapter be found to be void for any reason, such finding shall not affect any other sections.

§295.202. DEFINITIONS. The following words and terms, when used with these sections, shall have the following meaning.

Accessible surface - An interior or exterior surface painted with lead-based paint that is accessible to a young child to mouth or chew.

Accredited training program - A training program that has been accredited by the Texas Department of Health (department) to provide training for persons engaged in lead-based paint activities.

Adequate quality control - A plan or design to ensure the authenticity, integrity, and accuracy of lead-based paint samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

Act - Senate Bill 544 as amended by House Bill 729, 75th Legislature, 1997, codified at Texas Civil Statutes, Article 9029.

Bare soil - Soil not covered with grass, sod, or some other similar vegetation. Bare soil includes sand.

Board - The Texas Board of Health.

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Certified lead abatement project designer - A person who has been certified by the department to prepare lead abatement project designs, occupant protection plans, and abatement reports.

Certified lead abatement supervisor - A person who has been certified by the department to supervise and conduct lead abatements, and to prepare occupant protection plans and abatement reports.

Certified lead abatement worker - A person who has been certified by the department to perform abatements, as defined by this section.

Certified lead firm - A company, contractor, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities, and that has been certified by the department.

Certified lead inspector - A person who has been certified by the department to conduct lead inspections. Inspectors may also sample dust and soil for the purposes of abatement cleanup and clearance testing.

Certified lead risk assessor - A person who has been certified by the department to conduct lead risk assessments, lead inspections and lead hazard screens. Risk assessors may also sample dust and soil for the purposes of lead abatement cleanup and clearance testing.

Child-occupied facility - A building, or part of a building, constructed before 1978 that is visited regularly by the same child, six years of age or younger, on at least two different days in any seven-day period beginning on Sunday and ending on Saturday, if each day's visit lasts at least three hours, the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. The term may include, but is not limited to, day-care centers, preschools, or kindergarten classrooms.

Clearance levels - Values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. Clearance levels that are appropriate for the purposes of these regulations may be found in the Environmental Protection Agency Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil (60 Federal Register 47248 (1995)).

Commissioner - The Texas Commissioner of Health.

Common area - A portion of target housing or a child-occupied facility that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

Component or building component - Specific design or structural elements or fixtures of target housing or a child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

Containment - A regulated area that has been sealed and designed to prevent the release of lead-

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containing dust or materials into surrounding areas.

Course agenda - An outline of the key topics to be covered during a training course, including the time allotted to teaching each topic.

Course test - An evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

Course test blue print - Written documentation of the proportion of course test questions devoted to each major topic in the course curriculum.

Department - The Texas Department of Health.

Deteriorated paint - Paint that is cracking, flaking, chipping, chalking, or peeling from a building component or unit.

Discipline - One of the specific types or categories of lead-based paint activities for which individuals may receive training from accredited programs and become certified by the department. For example, "lead worker" is a discipline.

Distinct painting history - The application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component, room, or unit of a building structure.

Documented methodologies - Methods or protocols used to sample for the presence of lead in paint, dust, and soil. Documented methodologies may be found in the United States Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995); the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil (60 Federal Register 47248 (1995)); the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling, EPA report number 747-R-95-001 (March 1995) and other equivalent methods and guidelines approved by EPA and/or HUD.

Elevated blood lead level (EBL) - An absorption of lead that is a confirmed concentration of lead in whole blood of 20 $\mu\text{g}/\text{dl}$ (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 $\mu\text{g}/\text{dl}$ in two consecutive tests taken three to four months apart.

ELNS - Environmental Lead Notification Section within the Environmental Lead Branch, Toxic Substances Control Division.

Encapsulant - A substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

Encapsulation - The application of an encapsulant.

Enclosure - A process that makes lead-based paint inaccessible by providing a physical barrier that is mechanically attached to a surface.

EPA- The United States Environmental Protection Agency.

Federal laws and rules - Applicable federal laws and regulations adopted in these sections:

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(A) Toxic Substances Control Act (15 United States Code §2681 et seq.) Title IV, and the rules adopted by the EPA under that law for authorization of state programs;

(B) Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, and any regulations or requirements adopted by the HUD regarding eligibility for grants to states and local governments; and

(C) any other requirements adopted by a federal agency with jurisdiction over lead hazards.

Friction surface - An interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

Guest instructor - An individual designated by the training program manager to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

Hands-on skills assessment - An evaluation which tests the trainees' ability to perform satisfactorily the work practices and procedures used by a discipline, as well as any other skills covered in a training course.

Historical records - Documentation which identifies the material makeup (including brand, color type, and lead content) and dates of application of paint and other surface coatings.

HEPA - A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 microns or larger in diameter.

HUD - The United States Department of Housing and Urban Development.

HVAC - Heating, ventilation, and air conditioning systems.

Impact surface - An interior or exterior surface that is subject to damage by repeated impact, for example, certain parts of door frames.

Inspection - A surface-by-surface investigation by a certified inspector or a certified risk assessor to determine the presence of lead-based paint including a written report explaining the results of the investigation.

Interim controls - A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead Abatement -

(A) Includes any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(i) the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the removal or replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(ii) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures; and

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(iii) abatement projects, which specifically include, but are not limited to:

(I) projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to target housing or child-occupied facilities that:

(-a-) shall result in the permanent elimination of lead-based paint, lead-contaminated dust or soil, and other lead-based paint hazards; or

(-b-) are described in clauses (i) and (ii) of this subparagraph.

(II) projects involving the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons certified in accordance with the sections of this undesignated head relating to the certification requirements unless such projects are covered by subparagraph (B) of this section;

(III) projects involving the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons who, through their company name or promotional literature, represent, advertise, or hold themselves to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by subparagraph (B) of this section; or

(IV) projects involving the permanent elimination of lead-based paint hazards, lead-based paint, or lead-contaminated dust or soil, that are conducted in response to State or local abatement orders.

(B) Excludes:

(i) renovation, remodeling, or landscaping activities, which are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards;

(ii) interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards; and

(iii) demolition of target housing buildings and child-occupied facilities.

Lead-based paint - Paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

Lead-based paint activity - Inspection, testing, risk assessment, risk reduction, lead abatement project design or planning, abatement, removal or creation of lead-based paint hazards.

Lead-based paint hazard - Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by EPA pursuant to the Toxic Substances Control Act (TSCA) §403.

Lead-contaminated dust - Surface dust in target housing or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels determined to be hazardous as established by documented methodologies.

Lead-contaminated soil - Bare soil at target housing or child-occupied facilities that contains lead

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at or in excess of levels determined to be hazardous as established by documented methodologies.

Lead-hazard screen - An activity conducted by a certified risk assessor that involves limited paint and dust sampling to determine the presence of a lead-based paint hazard.

Living area - Areas of a target housing unit or a child-occupied facility used by one or more children six years of age or younger, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

Multi-family dwelling - A structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

OSHA - The Occupational Safety and Health Administration of the United States Department of Labor.

Permanently covered soil - Soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

Person - An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

Principal instructor - The individual who has the primary responsibility for organizing and teaching a particular course.

Recognized laboratory - An environmental laboratory recognized by EPA, pursuant to the Toxic Substances Control Act (TSCA) §405(b), as being capable of performing an analysis for lead content in materials, including paint, soil, and dust.

Reduction - Any measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including, but not limited to, interim controls and abatement.

Residential dwelling - A dwelling that is:

(A) a detached single family dwelling unit, including attached structures such as porches and stoops; or

(B) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk assessment - An assessment consists of:

(A) an on-site investigation conducted by a certified risk assessor to determine the existence, nature, severity, and location of lead-based paint hazards; and

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(B) a written report by the person or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Room - An enclosed or semi-enclosed living space within a residential dwelling.

Target housing - Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is six years of age or younger resides or is expected to reside in such housing) or any zero-bedroom dwelling. As defined in this section, target housing includes the terms residential dwelling, multi-family dwelling, and unit.

Testing - The collection of paint samples for lead analysis by an EPA recognized laboratory or the use of an XRF for determining the presence of lead.

Training curriculum - An established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

Training hour - At least 50 minutes of actual teaching, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training manager - The individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

TSCA - Toxic Substances Control Act (15 United States Code §2681 et seq) Title IV.

Unit - A room or connected group of rooms used or intended to be used by a single tenant or owner.

Visual inspection for clearance testing - The visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed, as indicated by the absence of visible residue, dust, and debris.

Visual inspection for risk assessment - The visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

X-Ray Fluorescence Analyzer (XRF) - An instrument used to determine the concentration of lead in a sample; readings are in milligrams per square centimeter (mg/cm²).

Zero-bedroom dwelling - Any residential dwelling in which the living area is not separated from the sleeping area. The term includes, but is not limited to, efficiencies, studio apartments, dormitory housing, military barracks, and rental of individual rooms in residential dwellings.

§295.203. FEDERAL DOCUMENTED METHODOLOGIES.

(a) The following federal documented methodologies provide information for conducting lead-based paint activities:

(1) "Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing," United States Department of Housing and Urban Development (HUD), June 1995, issued pursuant to Section 1017

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of the Residential Lead-Based Paint Hazard Reduction Act of 1992;

(2) "Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil," Environmental Protection Agency, 60 *Federal Register* 47248 (1995); and

(3) "Residential Sampling for Lead: Protocols for Dust and Soil Sampling," EPA, EPA report number 747-R-95-001 (March 1995).

(b) Copies of the documents in subsection (a) of this section are available for review at any department-accredited training provider or the Texas Department of Health, Toxic Substances Control Division, Austin, Texas, or any Texas Department of Health regional office and may be reviewed during normal business hours.

§295.204. ACCREDITATION OF TRAINING PROGRAM PROVIDERS.

(a) Accreditation requirement.

(1) A training program provider may seek accreditation from the department to offer courses in any of the following disciplines:

(A) lead inspector;

(B) lead risk assessor;

(C) lead abatement supervisor;

(D) lead abatement project designer; and

(E) lead abatement worker.

(2) A training program provider may also seek accreditation to offer refresher courses for each of the disciplines listed in paragraph (1) of this subsection.

(3) A training program provider shall not provide, offer, or claim to provide department-accredited training courses for certification purposes without first receiving accreditation from the department as required under subsection (c) of this section.

(b) Fees. An annual fee for lead training program provider accreditation shall be \$500. The fee payment must accompany the application. After accreditation the fee shall be paid in full each year on or before the day of the month of the expiration date given on the certificate. At least 30 days before the anniversary date of accreditation or the date an accreditation expires, the department, as a service to the accredited trainer, shall send a reminder notice to the accredited trainer, by first class mail to the last known address of the accredited trainer. Failure of the department to send the reminder notice creates no liability to the department and does not relieve the accredited trainer from paying the annual accreditation fee. After initial application, a fee of \$100 shall be paid for each additional course application to amend accreditation.

(c) Application process. The following are procedures a training program provider shall follow to receive department accreditation to offer lead-based paint activities courses.

(1) A training program provider seeking accreditation shall submit a written application to the department containing the following information:

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(A) the training program provider's name, address, and telephone number;

(B) a list of courses for which the training provider is applying; and

(C) a statement signed by the training program manager certifying that the training program meets the minimum requirements established in subsection (d) of this section. If a training program provider uses EPA-developed model training materials, a statement certifying the use of these materials shall be submitted. If a training program provider does not use EPA-developed training materials, its application for accreditation shall include:

(i) a copy of the student and instructor manuals to be used for each course; and

(ii) a copy of the course agenda for each course, which must include the time allotted for teaching each course topic.

(2) All training program providers shall include in their application for accreditation the following:

(A) a description of the facilities and equipment available for lecture and hands-on training;

(B) a copy of the course test blueprint for each course;

(C) a description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course;

(D) a copy of the quality control plan as described in subsection (d)(9) of this section;

(E) a statement certifying that copies of the documented methodologies listed in compliance with §295.203(a) of this title (relating to Federal Documented Methodologies) are on-site and available for review;

(F) documentation that the training manager and principal instructor(s) meet the requirements of subsection (d) of this section; and

(G) a specimen of the training certificate which will be given to students upon successful course completion and test passage.

(3) The department shall approve or disapprove an application for accreditation no more than 90 days after receiving a complete application from a training program provider. Upon approval, a certificate of accreditation shall be sent to the applicant within 30 days. Prior to disapproval, the department may, at its discretion, work with training program providers to address inadequacies in the application for accreditation. If necessary to determine compliance with this subsection the department may also request additional materials retained by the training program provider under subsections (c) and (d) of this section. If a training program provider's application is disapproved, the program may reapply for accreditation at any time by following the procedures in subsections (b) and (c) of this section.

(4) A training program provider may apply for accreditation to offer courses or refresher courses in as many training disciplines as it chooses. A training program provider may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(d) Minimum requirements for the accreditation of training program providers. For a training program provider to obtain and maintain accreditation from the department to offer courses in lead-based paint activities, the program shall meet the following minimum requirements for each discipline for which the

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program is seeking accreditation.

(1) The training program provider shall employ a training manager who has:

(A) at least two years of experience, education, or training in teaching workers or adults; or

(B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, or business administration or program management; or

(C) two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

(D) demonstrated experience, education, or training in the construction industry including lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training program manager shall designate a qualified principal instructor for each course who has:

(A) demonstrated experience, education, or training in teaching workers/adults;

(B) successfully completed at least 16 hours of instruction from a trainer utilizing a lead-specific EPA model course curriculum; or at least 16 hours of lead-specific training from a department-accredited training provider; and

(C) at least one year of experience in a lead discipline.

(3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training program manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. One individual may be employed as both the training manager and principal instructor if the individual possesses the qualifications listed in paragraphs (1) and (2) of this subsection.

(4) The following documents shall be recognized by the department as proof that training managers and principal instructors meet the relevant education, work experience, and/or training requirements specifically listed in paragraphs (1) and (2) of this subsection. This documentation must be submitted with the accreditation application and shall be retained and verified by the training program provider as required by the recordkeeping requirements contained at subsection (j) of this section. Those documents include the following:

(A) official academic transcripts or diploma, as proof of meeting the education requirements;

(B) resumes, letters of reference, or documentation of work experience, as records of meeting the work experience requirements; and

(C) certificates from train-the-trainer courses and lead-specific training courses, as proof of meeting the training requirements.

(5) The training program provider shall ensure the availability of and provide adequate facilities for the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and

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facilities as needed.

(6) To become accredited in the following disciplines, the training program provider shall provide training courses that meet the following training hour requirements:

(A) The lead inspector course shall last a minimum of 24 training hours, with a minimum of eight hours devoted to hands-on training. The curriculum for the inspector course is contained in subsection (e)(1) of this section.

(B) The lead risk assessor course shall last a minimum of 16 training hours. The curriculum for the risk assessor course is contained in subsection (e)(2) of this section, and must include at least four hours of hands-on training activities.

(C) The lead abatement supervisor course shall last a minimum of 32 training hours, with a minimum of eight hours devoted to hands-on training activities. The curriculum for the supervisor course is contained in subsection (e)(3) of this section.

(D) The lead abatement project designer course shall last a minimum of eight training hours. The curriculum for the project designer course is contained in subsection (e)(4) of this section.

(E) The lead abatement worker course shall last a minimum of 16 training hours, with a minimum of eight hours devoted to hands-on training activities. The curriculum for the worker course is contained in subsection (e)(5) of this section.

(7) For each course offered, the training program provider shall conduct a course test, and if applicable, a hands-on skills assessment at the completion of the course. Each individual must successfully complete the hands-on skills assessment and receive a passing score of 70% correct or above on the course test to pass any course.

(A) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in subsection (e) of this section.

(B) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(C) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) Training program providers shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(A) the name and a unique identification number or social security number of the individual;

(B) the name of the particular course that the individual completed;

(C) the date of course completion;

(D) the name, address, and telephone number of the training program provider.

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(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(B) procedures for the training manager's annual review of instructor competency.

(10) Training program providers must offer courses which teach the standards for conducting lead-based paint activities contained in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities), and other such standards developed by EPA and HUD. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in subsection (e) of this section.

(12) The training program manager shall allow the department to audit the training program at any reasonable time to verify the contents of the application for accreditation as described in subsection (c) of this section and to verify that the requirements of subsection (e) of this section are being met.

(13) If the applicant is a Texas corporation, a certificate of good standing issued by the Texas State Comptroller's Office must be submitted with the application for accreditation.

(14) The training program manager shall submit to the department a list of those individuals successfully completing a course including the name, social security number (optional) or other identifying information, and the date of course completion within ten working days of the completion of the course.

(15) The training program manager shall furnish the department with a copy of all scheduled courses and shall advise the department at least 24 hours in advance of any course cancellations or changes. Course schedules shall be provided to the department seven calendar days prior to conducting any course on the schedule. In the event that a training course must be scheduled immediately due to an emergency, notification to the department must be made as soon as possible, but no less than 48 hours prior to commencement of the course. Written justification for not notifying the department seven days in advance must be provided with the emergency training request.

(e) Minimum training curriculum requirements. To become accredited to offer lead-based paint activities instruction in the specific disciplines listed in paragraphs (1)-(5) of this subsection, training program providers must ensure that their courses of study include the following course topics. Requirements beginning with an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

(1) Lead inspector instruction:

(A) role and responsibilities of the inspector;

(B) background information on lead and its adverse health effects;

(C) background information regarding federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities including the Texas Environmental Lead Reduction Rules;

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(D) *lead-based paint inspection methods, including selection of rooms and components for sampling or testing;

(E) *paint, dust, and soil sampling methodologies;

(F) *clearance standards and testing, including random sampling;

(G) *preparation of the written final inspection report; and

(H) recordkeeping.

(2) Lead risk assessor instruction:

(A) role and responsibilities of the risk assessor;

(B) collection of background information to perform a risk assessment;

(C) sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food;

(D) *visual inspection for the purposes of identifying potential sources of lead-based paint hazards;

(E) *paint, dust, and soil sampling methodologies;

(F) *clearance standards and testing, including random sampling;

(G) *interpretation of lead-based paint and other lead sampling results, including all applicable state and federal guidance or regulations pertaining to lead-based paint hazards;

(H) development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(I) preparation of a final risk assessment report.

(3) Lead abatement supervisor instruction:

(A) role and responsibilities of the supervisor;

(B) background information on lead and its adverse health effects;

(C) background information regarding federal, state, and local regulations and guidance that pertain to lead-based paint abatement including the Texas Environmental Lead Reduction Rules;

(D) liability and insurance issues relating to lead-based paint abatement;

(E) contract specifications and cost estimation;

(F) community relations;

(G) project management and supervisory techniques;

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- (H) *risk assessment and inspection report interpretation;
 - (I) development and implementation of an occupant protection plan and abatement report;
 - (J) *lead-based paint hazard recognition and control;
 - (K) *lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;
 - (L) *interior dust abatement/cleanup or lead-based paint hazard control and reduction methods;
 - (M) *soil and exterior dust abatement or lead-based paint hazard control and reduction methods;
 - (N) clearance standards and testing;
 - (O) cleanup and waste disposal; and
 - (P) recordkeeping.
- (4) Lead abatement project designer instruction:
- (A) role and responsibilities of the project designer;
 - (B) contract specifications and cost estimation for abatement projects;
 - (C) development and implementation of an occupant protection plan for abatement projects;
 - (D) lead-based paint abatement and lead hazard reduction methods, including restricted practices for abatement projects;
 - (E) interior dust abatement/cleanup or lead hazard control and reduction methods for abatement projects;
 - (F) clearance standards and testing for abatement projects; and
 - (G) integration of lead-based paint abatement methods with modernization and rehabilitation projects for abatement projects.
- (5) Lead abatement worker instruction:
- (A) role and responsibilities of the lead abatement worker;
 - (B) background information regarding lead and its adverse health effects;
 - (C) background information regarding federal, state, and local regulations and guidance that pertain to lead-based paint abatement including the Texas Environmental Lead Reduction Rules;
 - (D) *lead-based paint hazard recognition and control;
 - (E) *lead-based paint abatement and lead-based paint hazard reduction methods, including

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restricted practices;

(F) *interior dust abatement methods/cleanup or lead-based paint hazard reduction; and

(G) *soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Minimum requirements for the accreditation of refresher training program providers. A training program provider may apply for accreditation to teach as many different refresher training courses as it chooses. To teach an accredited refresher course, a training program provider must be accredited, or concurrently applying for accreditation, to provide instruction in the corresponding full course (e.g., lead-based paint inspector, abatement supervisor). To obtain department accreditation to offer refresher training, a training program provider must meet the following minimum requirements.

(1) Each refresher course shall review the curriculum topics of the full-length courses listed under subsection (e) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(A) an overview of current safety practices relating to lead-based paint activities in general as well as discipline-specific information;

(B) current laws and regulations relating to lead-based paint activities in general as well as discipline-specific information; and

(C) current technologies relating to lead-based paint activities in general as well as discipline-specific information.

(2) Each refresher course, except for the project designer course, shall include a minimum of eight training hours. The project designer refresher shall include a minimum of four training hours. A hands-on assessment, if applicable, must also be conducted in this period.

(3) Each student shall be required to pass a course test that covers all of the topics contained in the course. Passing students shall be provided with a refresher course completion certificate.

(4) A training program provider seeking refresher course accreditation shall submit to the department a written application containing the following:

(A) the training program provider's name, address, and telephone number;

(B) a list of the refresher courses for which it is applying for accreditation;

(C) a copy of the table of contents and course-identifying cover sheet of the student and instructor manuals for each course;

(D) a statement signed by the training program manager certifying that the program complies at all times with all requirements of subsection (f) of this section; and

(E) the course test blueprint for each refresher course.

(5) If a training program provider applies for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course, the department shall use the approval

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procedure described in subsection (c) of this section.

(6) If an application for refresher training accreditation is received apart from an application for accreditation as described in subsection (c) of this section, the department shall approve or disapprove a request for refresher training accreditation within 90 days of receiving a complete application. Upon approval, a certificate of refresher training accreditation shall be sent to the applicant within 30 days. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. The department may, at its discretion, work with training program providers to address inadequacies in the application for refresher accreditation. If a training program provider's application is disapproved, the training program provider may reapply at any time after the reason for disapproval has been corrected.

(g) Re-accreditation of training programs.

(1) Unless re-accredited, a training program provider's accreditation shall expire three years after the date of issuance. If a training program meets the requirements of this section, the training program provider shall be re-accredited.

(2) A training program provider seeking re-accreditation shall submit an application to the department no later than 60 days before its accreditation expires. If a training program provider does not submit its application for re-accreditation by that date, the department cannot guarantee the application will be reviewed and acted upon before the end of the provider's accreditation period.

(3) The training program provider's application for re-accreditation shall contain:

(A) the training program provider's name, address, and telephone number;

(B) a list of courses for which it is applying for re-accreditation;

(C) a description of any changes or updates to the training facility or equipment since its last application was approved; and

(D) a certified statement signed by the program manager stating:

(i) the training program provider will at all times comply with all requirements in subsections (d) and (f) of this section; and

(ii) the recordkeeping and reporting requirements of subsection (j) of this section will be followed.

(4) The department may audit the training program provider at any reasonable time to verify the contents of the application for re-accreditation as described in paragraph (3) of this subsection.

(h) Suspension, deaccreditation, and modification of accredited training programs.

(1) The department may, after notice and an opportunity for hearing, suspend, deaccredit, or modify a training program provider's accreditation if a training program, training manager, or other person with supervisory authority over the training program has:

(A) misrepresented the contents of a training course to the department and/or the student population;

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(B) failed to submit required information or notifications in a timely manner;

(C) failed to maintain required records;

(D) falsified accreditation records, instructor qualifications, or other accreditation information;

(E) failed to comply with the training standards and requirements in this section;

(F) failed to comply with federal, state, or local lead-based paint statutes or regulations;

(G) made false or misleading statements to the department in its application for accreditation or re-accreditation which the department relied upon in approving the application; or

(H) failed to pay the annual fee.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this subsection, evidence of a failure to comply with relevant statutes or regulations.

(i) Procedures for suspension, deaccreditation or modification of training program accreditation.

(1) When the department decides to suspend, deaccredit, or modify the accreditation of a training program, it shall notify the affected entity in writing of the following:

(A) the assertion of laws and facts upon which the suspension, deaccreditation, or modification is based;

(B) the commencement date and duration of the suspension, deaccreditation, or modification;

(C) actions, if any, which the affected entity may take to avoid suspension, deaccreditation, or modification, or to receive accreditation in the future;

(D) the opportunity and method for requesting a hearing prior to final departmental action to deaccredit, suspend, or modify accreditation; and

(E) any additional information, as appropriate, which the department may provide.

(2) If a hearing is requested by the accredited training program pursuant to subsection (h)(1) of this section, the person charged shall be given the opportunity for a hearing conducted in accordance with the department's informal hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(j) Training program recordkeeping requirements.

(1) Accredited training program providers shall maintain and make available to the department, upon request, the following records:

(A) all documents specified in subsection (d)(4) of this section that demonstrate the qualifications listed in subsections (d)(1) and (d)(2) of this section of the training manager and principal instructors;

(B) current curriculum/course materials and documents reflecting any changes made to these

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materials;

(C) the course test blueprint;

(D) information on how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how the skills are graded, what facilities are used, and the pass/fail rate;

(E) the quality control plan as described in subsection (d)(9) of this section;

(F) results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate and test passage date; and

(G) any other material not listed in subparagraphs (A)-(F) of this paragraph that was submitted to the department as part of the program's application for accreditation.

(2) The training program shall retain the records required by paragraph (1) of this subsection at the location (i.e., address) specified on the training program accreditation application (or as modified in accordance with paragraph (3) of this subsection) for a minimum of three years and six months.

(3) The training program shall notify the department in writing within 30 days of relocating its business or transferring the records.

§295.205. CERTIFICATION: APPLICATIONS, DENIALS, AND RENEWALS.

(a) General requirements. Applications for certification or renewal under these sections must be made on forms provided by the Texas Department of Health (department), shall be signed by the applicant, and must be accompanied by a cashier's check or money order, made payable to the Texas Department of Health, for the amount of the certification or certification renewal fee. Only applications which are complete shall be considered by the department; the burden of proof of meeting all requirements for certification rests with the applicant. For specific requirements for the various certification disciplines, refer to the sections applicable to that discipline relating to certification requirements.

(b) Inquiries. Potential applicants who wish to discuss or obtain information concerning qualification requirements may do so by calling the department's Environmental Lead Branch at (512) 834-6612 or (888) 778-9440 (toll-free in Texas).

(c) Denials. The department may deny an application for certification or renewal if the applicant fails to meet the standards established by these sections (applicants may not reapply for the time periods specified), including, but not limited to:

(1) past history of assessed penalties from violations of these sections by the applicant and/or the applicant's employees or agents - three years;

(2) evidence that the applicant cannot be legally employed in the United States - 90 days;

(3) fraud, misrepresentation, or deception in obtaining, attempting to obtain, or renewing a certificate - three years;

(4) failure to submit the required information and/or documentation within 90 days of a written request by the department - 90 days;

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(5) failure to submit the required fee with an application for certification or when renewing a certification - 90 days;

(6) failure to maintain or to permit inspection of the records required of all certified persons - one year;

(7) employing or permitting an unauthorized person or individual to work on any lead project or operation - one year;

(8) engaging in or attempting to engage in an lead-related activity without a valid certification - three years;

(9) failure to comply with any rule adopted by the board or order issued by the department - three years;

(10) failure to provide notice of a lead project or operation as required by these sections - two years;

(11) conviction within the past five years of a felony or a misdemeanor related to conditions for which a person engaged in lead activities - three years;

(12) failure of a certified person to complete their responsibilities during a lead project or operation due to insufficient financial resources- three years;

(13) failure to prevent lead contamination of areas adjacent to the abatement area - three years;

(14) failure to pass the state certification examination with a score of at least 70% correct after three attempts; or

(15) engaging in cheating practices on any state certification examination - three years.

(d) Administrative penalty. In accordance with §295.220 of this title (relating to Compliance: Administrative Penalty) an administrative penalty may be assessed, for fraud or misrepresentation in obtaining, attempting to obtain, or renewing a certification.

(e) Appeal of certification denial. A denial of an application or a request for renewal may be appealed by the applicant. The details for requesting a hearing will be included in each letter of denial.

(f) Processing applications and renewals.

(1) Time periods. Applications for certification or renewal will be processed within 60 days of receipt by issuing a certification or by providing a written notice to the applicant outlining the reasons why the application is deficient. In cases of a deficient application, the certification will be issued within 60 days of the applicant meeting all the certification requirements including receipt of all acceptable documents at the department.

(2) Reimbursement of fees. Initial application or renewal fees will be refunded only when the department does not process a completed application in the time period specified, or an applicant is not able to meet the certification requirements. If fee amounts are in excess of the correct fee amount, the excess payment will be reimbursed. Reimbursement of fees paid by applicants not meeting the certification requirements will be made, less a \$25 administrative fee. A reimbursement request must be made to the

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department in writing within 90 days of notification that the applicant does not meet certification requirements. Otherwise, fees for applications and renewals are not eligible for refund or credit.

(3) Denial of an application due to abandonment of the application does not constitute grounds for reimbursement. Abandonment is defined as failure to respond to a written request of the department by the applicant for a period of 90 days.

(4) Appeal of reimbursement denial. If the request for reimbursement authorized by this subsection is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner by writing to the chief, Environmental Lead Branch, the designated representative of the commissioner, requesting reimbursement of all filing fees paid because his/her application was not processed within the prescribed time period. The branch chief shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will determine the final action and provide written notification of his/her decision to the applicant and the branch chief.

(5) Contested case hearing. If at any time during the processing of the application a contested case proceeding arises, the time periods in the department's formal hearing procedures, §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearings), are applicable.

(g) Reminder notices. At least 30 days before the anniversary date of certification or the date a certificate expires, the department, as a service to the certified person, shall send a reminder notice to the certified person, by first-class mail to the last known address of the certified person. It is the responsibility of the certified person to keep the department informed of their current address, or change of address for all certification categories, and to take action to keep their certification current or renew their certification whether or not they have received the notification from the department. Failure by the department to send the timely notice creates no liability to the department and does not relieve the applicant of the obligation to file a timely renewal application. The reminder notice will state:

- (1) the type of certification requiring payment of the annual fee or renewal fee;
- (2) the time period allowed for payment of the annual fee or renewal fee; and
- (3) the amount of the annual fee or renewal fee.

(h) Renewal requirements. Before the certification expires, the certification may be renewed for an additional three-year term provided that the person:

- (1) is qualified to be certified;
- (2) pays to the department the proper renewal fee;
- (3) submits to the department a renewal application on the prescribed form along with all required documentation;
- (4) completes successfully the requirements for renewal and examination, if required;
- (5) has complied with all final orders resulting from any violations of these sections; and
- (6) submits a copy of the refresher training course certificates, if required.

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(i) Prohibition. Practicing with a lapsed certificate is prohibited, regardless of when the renewal application is received. Also, certificates which have lapsed for a period exceeding 180 days beyond the three-year expiration date cannot otherwise be renewed. A new application subject to current qualifications is required.

(j) Replacements. A certified person or firm may obtain a replacement certificate and/or identification (ID) card by submitting such request in writing on a department-issued form along with the reissuance fee of \$20 for each official document requested.

(k) Retention of control. The department may, at any time after the filing of any application and before the expiration of any certification, require:

(1) additional written information and assurances; and

(2) cooperation with any inspections initiated by the department, or the production of any documentary or other evidence that the department considers necessary to determine whether the certification should be granted, delayed, denied, modified, suspended or revoked.

§295.206. LEAD INSPECTOR: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead inspector to engage in lead inspection of target housing and child-occupied facilities. Such certification is valid for a period of three years from the date the certification application is approved by the department.

(b) Specific requirements.

(1) Applicants for certification as lead inspectors are required to:

(A) successfully complete a lead inspector training course and receive a course completion certificate from a department-accredited training program provider; and

(B) pass the state certification examination for lead inspectors.

(2) Individuals who have made application for certification to the department prior to June 1, 1998, and are subsequently granted certification by the department, and who maintain continuous certification from that date, are not subject to the examination requirement of paragraph (1)(B) of this subsection.

(c) State certification examination.

(1) In order to take the certification examination for lead inspectors, an individual must first successfully complete a lead inspector course and receive a course completion certificate from a department-accredited training provider.

(2) The individual shall then register for the examination on a department-issued form prior to the examination date.

(3) A score of at least 70% correct must be achieved to pass the examination.

(4) An individual may take the certification examination no more than three times within six months of receiving a course completion certificate.

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(5) If an individual does not pass the certification examination within six months of receiving a course completion certificate, the individual must retake the lead inspector course from a department-accredited training provider and receive a course completion certificate prior to retaking the certification examination.

(6) An examination fee of \$50 for the initial examination and a fee of \$50 for each re-examination shall be submitted to the department with the department-issued examination registration form. The required fee must be in the form of a cashier's check or money order made payable to the Texas Department of Health. The required fee may not be paid at the examination site, but must be received by the department with the examination registration form prior to the examination date.

(d) Any individual can fulfill the requirements of subsection (b)(1)(A) of this section by showing proof of the successful completion, between October 1, 1990, and August 31, 1996, of a lead inspector training course which utilized the Environmental Protection Agency (EPA) model course curriculum. Individuals shall have until June 1, 1998, to make application based upon this grandfathering provision. After that date, all individuals seeking certification shall complete the required course and receive a course completion certificate from a department-accredited training provider.

(e) Responsibilities. The responsibilities of the certified lead inspector include the following:

(1) conduct post-abatement soil and dust clearance testing following procedures in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities);

(2) conduct lead-based paint inspections of target housing and child-occupied facilities that measure the concentration of lead in paint on a surface-by-surface basis; and

(3) complete a written inspection report.

(f) Application for certification renewal. To become re-certified, the inspector must successfully complete an inspector refresher training course from a department-accredited training program provider no sooner than 180 days prior to the inspector's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(g) Fees. The annual fee for lead inspector certification shall be \$150. The fee must accompany the certification or renewal application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required.

§295.207. LEAD RISK ASSESSOR: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead risk assessor to engage in lead risk assessment or lead hazard screens of target housing and child-occupied facilities. Such certification is valid for a period of three years from the date the certification application is approved.

(b) Specific requirements.

(1) Applicants for certification as lead risk assessors are required to:

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(A) successfully complete a lead inspector and a lead risk assessor training course, and receive course completion certificates from a department-accredited training program provider;

(B) pass the state certification examination for lead risk assessors; and

(C) meet or exceed the following additional experience and/or education requirements:

(i) a bachelor's degree and one year of experience in a related field (e.g. lead, asbestos, public health, environmental remediation work, or building construction trades); or

(ii) an associate's degree and two years of experience in a related field (e.g. lead, asbestos, public health, environmental remediation work, or building construction trades); or

(iii) a high school diploma (or equivalent), plus at least three years of experience in a related field (e.g. lead, asbestos, public health, environmental remediation work, or building construction trades); or

(iv) certification as an industrial hygienist, a professional engineer, a public health nurse, a professional registered sanitarian, a certified safety professional, a registered architect, or an environmental scientist.

(2) Individuals who have made application for certification to the department prior to June 1, 1998, and are subsequently granted certification by the department, and who maintain continuous certification from that date, are not subject to the examination requirement of paragraph (1)(B) of this subsection.

(c) State certification examination.

(1) In order to take the certification examination for risk assessors, an individual must first successfully complete lead inspector and lead risk assessor courses and receive course completion certificates from a department-accredited training provider.

(2) The individual shall then register for the examination on a department-issued form prior to the examination date.

(3) A score of at least 70% correct must be achieved to pass the examination.

(4) An individual may take the certification examination no more than three times within six months of receiving a course completion certificate.

(5) If an individual does not pass the certification examination within six months of receiving course completion certificates, the individual must retake lead inspector and lead risk assessor courses from a department-accredited training provider and receive course completion certificates prior to retaking the certification examination.

(6) An examination fee of \$50 for the initial examination and a fee of \$50 for each re-examination shall be submitted to the department with the department-issued registration form. The required fee shall be received by the department in the form of a cashier's check or money order made payable to the Texas Department of Health. The required fee may not be paid at the examination site, but must be received by the department with the examination registration form prior to the examination date.

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(d) Any individual can fulfill the requirements of subsection (b)(1)(A) of this section by showing proof of the successful completion, between October 1, 1990, and August 31, 1996, of a lead inspector training course and a lead risk assessor training course which utilized the Environmental Protection Agency (EPA) model course curriculum. Individuals shall have until June 1, 1998, to make application based upon this grandfathering provision. After that date, all individuals seeking certification shall complete the required courses and receive course completion certificates from a department-accredited training provider.

(e) Responsibilities. The responsibilities of the certified lead risk assessor include the following:

(1) conduct a risk assessment and other lead hazard assessment activities (such as screening a residence for lead hazard) in target housing and child-occupied facilities;

(2) complete a written risk assessment report;

(3) interpret the results of assessments;

(4) identify hazard control strategies to reduce or eliminate lead exposures;

(5) conduct post-abatement soil and dust clearance sampling and evaluate the results; and

(6) perform the same duties of a certified lead inspector as specified in §295.206(e) of this title (relating to Lead Inspector: Certification Requirements).

(f) Application for certification renewal. To become re-certified, the risk assessor must successfully complete lead inspector and lead risk assessor refresher training courses from a department-accredited training program provider no sooner than 180 days prior to the risk assessor's certification expiration date

and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(g) Fees. The annual fee for lead risk assessor certification shall be \$300. The fee must accompany the certification or renewal application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required.

§295.208. LEAD ABATEMENT SUPERVISOR: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead abatement supervisor to engage in such activity in target housing and child-occupied facilities. Such certification shall be valid for a period of three years from the date the certification application is approved by the department.

(b) Specific requirements.

(1) Applicants for certification as lead abatement supervisors are required to:

(A) successfully complete a lead abatement supervisor training course and receive a course completion certificate from a department-accredited training program provider;

(B) pass the state certification examination for lead abatement supervisors; and

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(C) meet or exceed the following additional experience and/or education requirements:

(i) one year of experience as a certified lead abatement worker; or

(ii) at least two years experience in a related field (e.g. lead, asbestos, or environmental remediation work), or in the building construction trades.

(2) Individuals who have made application for certification to the department prior to June 1, 1998, and are subsequently granted certification by the department, and who maintain continuous certification from that date, are not subject to the examination requirement of paragraph (1)(B) of this subsection.

(c) State certification examination.

(1) In order to take the certification examination for lead abatement supervisors, an individual must first successfully complete a lead abatement supervisor course and receive a course completion certificate from a department-accredited training provider.

(2) The individual shall then register for the examination on a department-issued form prior to the examination date.

(3) A score of at least 70% correct must be achieved to pass the examination.

(4) An individual may take the certification examination no more than three times within six months of receiving a course completion certificate.

(5) If an individual does not pass the certification examination within six months of receiving a course completion certificate, the individual must retake the lead abatement supervisor course from a department-accredited training provider and receive a course completion certificate prior to taking the certification examination.

(6) An examination fee of \$50 for the initial examination and a fee of \$50 for each re-examination shall be submitted to the department with the department-issued registration form. The required fee shall be received by the department in the form of a cashier's check or money order made payable to the Texas Department of Health. The required fee may not be paid at the examination site, but must be received by the department with the examination registration form prior to the examination date.

(d) Any individual can fulfill the requirements of subsection (b)(1)(A) of this section by showing proof of the successful completion, between October 1, 1990, and August 31, 1996, of a lead abatement supervisor training course which utilized the Environmental Protection Agency (EPA) model course curriculum. Individuals shall have until June 1, 1998, to make application based upon this grandfathering provision. After that date, all individuals seeking certification shall complete the required course and receive a course completion certificate from a department-accredited training provider.

(e) Responsibilities. The responsibilities of the certified lead abatement supervisor include the following:

(1) identify the most appropriate course(s) of action to eliminate identified lead hazards;

(2) ensure that all abatement activities in target housing and child-occupied facilities are completed according to the standards outlined in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities);

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(3) supply personal protection equipment to employees, train employees who perform lead-related activities in the use of equipment, and supervise their compliance;

(4) ensure that abatement activities are conducted in accordance with regulatory requirements;

(5) prepare a written abatement report;

(6) develop an occupant protection plan;

(7) be available at all times as described in §295.212(d)(2) when abatement activities are being conducted;

(8) ensure completion of all abatement activities according to these sections;

(9) assume the duties of lead abatement workers or perform activities affecting lead materials;

(10) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.218 of this title (relating to Compliance: Inspections and Investigations); and

(11) maintain standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations.

(f) Application for certification renewal. To become re-certified, the lead abatement supervisor must successfully complete a lead abatement supervisor refresher training course from a department-accredited training provider no sooner than 180 days prior to the supervisor's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(g) Fees. The annual fee for lead abatement supervisor certification shall be \$150. The fee must accompany the certification or renewal application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required.

§295.209. LEAD ABATEMENT PROJECT DESIGNER: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead abatement project designer to engage in such activity in target housing and child-occupied facilities. Such certification shall be valid for a period of three years from the date the certification application is approved by the department.

(b) Specific requirements.

(1) Applicants for certification as a lead abatement project designer are required to:

(A) successfully complete a lead abatement supervisor training course and receive a course completion certificate from a department-accredited training program provider;

(B) successfully complete a lead abatement project designer training course and receive a course

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completion certificate from a department-accredited training program provider; and

(C) meet or exceed the following additional experience and/or education requirements:

(i) a bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field; or

(ii) four years of experience in building construction and design or a related field.

(2) Any individual can fulfill the requirements of paragraph (1)(A) and (B) of this subsection by showing proof of the successful completion, between October 1, 1990, and August 31, 1996, of lead abatement supervisor and lead abatement project designer training courses which utilized the Environmental Protection Agency (EPA) model course curriculum. Individuals shall have until June 1, 1998, to make application based upon this grandfathering provision. After that date, all individuals seeking certification shall complete the required courses and receive course completion certificates from a department-accredited training provider.

(c) Responsibilities. The responsibilities of the certified lead abatement project designer are to:

(1) comply with standards of operation, including EPA and OSHA regulations;

(2) prepare a written abatement project design(s);

(3) develop a written occupant protection plan;

(4) prepare a written abatement report; and

(5) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.218 of this title (relating to Compliance: Inspections and Investigations).

(d) Application for certification renewal. To become re-certified, the lead abatement project designer must successfully complete lead abatement supervisor and lead abatement project designer refresher training courses from a department-accredited training provider no sooner than 180 days prior to the project designer's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(e) Fees. The annual fee for lead abatement project designer certification shall be \$300. The fee must accompany the certification or renewal application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required.

§295.210. LEAD ABATEMENT WORKER: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. A person must be certified by the department as a lead abatement worker to engage in such activity in target housing and child-occupied facilities. Such certification shall be valid for a period of three years from the date the certification application is approved by the department.

(b) Specific requirements.

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(1) Applicants for certification as lead abatement workers are required to successfully complete a lead abatement worker training course and receive a course completion certificate from a department-accredited training program provider.

(2) Any individual can fulfill the requirements of subsection (b)(1) of this section by showing proof of the successful completion, between October 1, 1990, and August 31, 1996, of a lead abatement worker training course which utilized the Environmental Protection Agency (EPA) model course curriculum. Individuals shall have until June 1, 1998, to make application based upon this grandfathering provision. After that date, all individuals seeking certification shall complete the required course and receive a course completion certificate from a department-accredited training provider.

(c) Application for certification renewal. To become re-certified, the lead abatement worker must successfully complete a lead abatement worker refresher training course from a department-accredited training provider no sooner than 180 days prior to the worker's certification expiration date and follow the procedures contained in §295.205 of this title (relating to Certification: Applications, Denials, and Renewals).

(d) Fees. The annual fee for lead abatement worker certification shall be \$50. The fee must accompany the certification or renewal application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required.

§295.211. LEAD FIRM: CERTIFICATION REQUIREMENTS.

(a) Certification requirements. All firms engaged in or offering to perform lead-based paint activities in target housing and child-occupied facilities must be certified by the department. Such certification is valid for three years from the date the certification application is approved by the department.

(b) Specific requirements.

(1) A firm seeking certification shall submit to the department a letter signed by the firm's owner or an authorized agent of the firm certifying that the firm will:

(A) only employ certified employees to conduct lead-based paint activities; and

(B) follow the standards for conducting lead-based paint activities set out in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities).

(2) A firm shall submit a statement indicating whether the firm is a corporation, giving the state of incorporation and charter number; or, if not a corporation, provide a list of all owners (including their titles) employed by the unincorporated firm.

(3) The firm shall maintain all records pursuant to the requirements in §295.212 of the title.

(c) Responsibilities. The responsibilities of a certified firm are:

(1) to comply with the standards of operation, including EPA and the Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations;

(2) to provide required notification to the department about impending abatement projects, changes requiring re-notification, and emergency notifications, as described in §295.214 of this title (relating to Notifications);

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(3) to supply and train employees who perform lead-based paint abatement activities in the use of personal protection equipment, and to supervise their compliance; and

(4) to assist department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.218 of this title (relating to Compliance: Inspections and Investigations).

(d) Application for certification renewal. To maintain certification, the firm must seek re-certification by submitting an application to the department no later than 30 days before its certification expires. If the certified firm does not submit its application for re-certification by that date, the department cannot guarantee that the application will be reviewed and acted upon before the end of the firm's certification period.

(e) Fees. The annual fee for lead firm certification shall be \$500. The fee must accompany the certification or renewal application the first year, and accompany the annual fee payment coupon issued by the department for years two and three. In order to retain certification, all annual fees must be paid as required.

§295.212. STANDARDS FOR CONDUCTING LEAD-BASED PAINT ACTIVITIES.

(a) Inspection.

(1) Lead-based paint inspections shall be conducted only by persons certified by the department as an inspector or risk assessor and must be conducted according to the procedures in this section.

(2) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint.

(A) For every residential dwelling and child-occupied facility, each interior component with a distinct painting history, and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(B) If conducting an inspection in a multi-family dwelling or child-occupied facility, all components with a distinct painting history in every common area shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) The collection and analysis of paint samples to determine the presence of lead-based paint shall be conducted using documented methodologies which incorporate adequate quality control procedures.

(4) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(A) date of inspection;

(B) address of buildings and units;

(C) date of construction of buildings and units;

(D) unit numbers (if applicable);

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(E) name, address, and telephone number of the owner of buildings and units;

(F) name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(G) name, address, and telephone number of the certified firm employing each inspector and/or risk assessor;

(H) name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(I) each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the brand name, model, and serial number of any XRF device;

(J) specific locations of each painted component tested for the presence of lead-based paint; and

(K) the results of the inspection expressed according to the sampling method used.

(b) Lead hazard screen.

(1) A lead hazard screen shall be conducted only by persons certified by the department as risk assessors.

(2) A lead hazard screen shall be conducted as follows.

(A) Collect background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children six years of age or younger.

(B) A visual inspection of the residential dwelling or child-occupied facility and common area shall be conducted to:

(i) determine if any deteriorated paint is present; and

(ii) locate at least two dust sampling locations;

(C) If deteriorated paint is present, each surface with deteriorated paint and having a distinct painting history shall be tested, using documented methodologies, for the presence of lead-based paint.

(D) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age six or younger, are most likely to come in contact with dust.

(E) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in subparagraph (D) of this paragraph, the risk assessor shall also collect composite dust samples from any common areas where one or more children six years of age or younger are likely to come into contact with dust.

(3) Any paint and dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.

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(4) Any collected paint chip or dust samples shall be analyzed according to subsection (e) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a lead hazard screen report, which shall include the following:

(A) the information required in a risk assessment report as specified in subsection (c) of this section, excluding paragraphs (9)(P)-(R); and

(B) recommendations concerning the desirability for follow-up risk assessments.

(c) Risk assessment.

(1) A lead risk assessment shall be conducted only by persons certified by the department as risk assessors and must be conducted according to the procedures in this subsection.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential sources of lead-based paint hazards. If deteriorated paint or other potential sources of lead-based paint hazards are present, each surface with deteriorated paint or each painted surface which is a potential lead-based paint hazard shall be tested using documented methodologies for the presence of lead.

(3) Background information shall be collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may result in lead-based paint exposure to one or more children six years of age or younger.

(4) In residential dwellings, dust samples (composite or single-surface samples) from the window and floor shall be collected in all living areas where one or more children six years of age or younger are most likely to come into contact with dust.

(5) For multi-family dwellings and child-occupied facilities, dust samples (composite or single-surface samples) from the window and floor shall be collected in all living areas where one or more children six years of age or younger are most likely to come into contact with dust. In addition, window and floor dust samples (composite or single-surface samples) shall be collected in the following locations:

(A) common areas adjacent to the sampled unit; and

(B) other common areas in the building where the risk assessor determines that one or more children six years of age or younger are likely to come into contact with dust.

(6) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(A) exterior play areas where bare soil is present; and

(B) dripline/foundation areas where bare soil is present.

(7) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(8) Any collected paint chip, dust, or soil samples shall be analyzed according to subsection (e) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

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(9) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(A) date of assessment;

(B) physical address of building;

(C) date of construction of building;

(D) unit numbers (if applicable);

(E) name, address, and telephone number of the owner of each building or unit;

(F) name, signature, and certification number of the certified risk assessor conducting the assessment;

(G) name, address, and telephone number of the certified firm employing each risk assessor;

(H) name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(I) results of the visual inspection;

(J) testing method and sampling procedure for paint analysis employed;

(K) specific locations of each painted component tested for the presence of lead-based paint;

(L) all data collected from on-site testing including quality control data and, if used, the brand name, model, and serial number of any XRF device;

(M) all results of laboratory analysis on collected paint, soil, and dust samples;

(N) any other sampling results;

(O) any background information collected pursuant to paragraph (3) of this subsection;

(P) to the extent that they are used as part of the lead-based paint hazard determination, an evaluation of the adequacy of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-related hazards;

(Q) a description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(R) a description of recommended interim controls and/or abatement options for each identified lead-based paint hazard, and a suggested prioritization for taking each action based on the immediacy and severity of the hazard. If the use of an encapsulant or enclosure is recommended, the report shall include a maintenance and monitoring schedule for the encapsulant or enclosure.

(d) Abatement.

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(1) A lead abatement shall be conducted only by an individual certified by the department as a worker or supervisor, and if conducted, shall be conducted according to the procedures in this subsection.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be available either directly or through a pager or answering service, and able to be present at the work site in no more than two hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this subsection and all other federal, state, and local requirements.

(4) Notification of the commencement of lead-based paint abatement activities in target housing or child-occupied facilities or as a result of a federal, state, or local order shall be given to the department, according to the procedures established in §295.214 of this title (relating to Notifications), prior to the commencement of abatement activities.

(5) A written occupant protection plan shall be developed and implemented for all abatement projects and shall be prepared according to the following procedures.

(A) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(B) A certified supervisor or project designer shall prepare the occupant protection plan.

(C) The occupant protection plan must be at the worksite at all times during any abatement activity.

(6) The following work practices shall be followed during a lead abatement.

(A) Open-flame burning or torching of lead-based paint is prohibited.

(B) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control capable of removing particles of 0.3 microns or larger from the air at 99.97% or greater efficiency.

(C) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces.

(D) Operating a heat gun on lead-based paint is permitted only at a temperature below 1100 degrees Fahrenheit.

(7) If conducted, soil abatement shall be conducted in one of the following ways.

(A) If soil is removed, the lead-contaminated soil shall be replaced with non-contaminated soil.

(B) If soil is not removed, the lead-contaminated soil shall be permanently covered.

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(8) The following post-abatement clearance procedures shall be performed by a certified inspector or risk assessor.

(A) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(B) Following the visual inspection, clearance sampling for dust shall also be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(C) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.

(D) Dust samples for clearance purposes shall be taken a minimum of one hour after completion of final post-abatement clean-up activities.

(E) The following locations shall be sampled for lead-contaminated dust based upon the extent of abatement activities conducted in or on the target housing or child-occupied facility.

(i) After conducting an abatement with containment, a sample shall be taken from a window (if available) and the floor of each room, as well as from a window (if available) and from the floor of each common area within the containment area. In addition, a sample shall be taken from the floor outside the containment area.

(ii) After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms and any adjacent hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from a window (if available) and the floor of each room. If there are less than four rooms, then all rooms, including all adjacent hallways or stairwells, shall be sampled. In addition, a dust sample shall be taken from a window (if available) and the floor of each common area.

(iii) Following an exterior paint abatement, a visual inspection shall be conducted to determine and ensure that all horizontal surfaces in the outdoor living area closest to the abated surface shall be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips in bare soil in common areas, on the dripline or next to the foundation below any abated exterior surface. If paint chips are present, they must be removed from the site and properly disposed, according to all applicable federal, state, and local requirements.

(F) The certified inspector or risk assessor shall compare the residual lead dust level (as determined by the laboratory analysis) from each dust sample with applicable clearance levels for lead in dust on floors and windows. If the residual dust levels in a sample exceed the clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(9) In a multi-family dwelling with similarly constructed and maintained units, random sampling for the purposes of clearance may be conducted, provided:

(A) the individuals who abate or clean the units do not know which units will be selected in the sample;

(B) a sufficient number of units are selected for sampling to provide a 95% level of confidence that no more than 5.0% or 50 of the units (whichever is smaller) in the sampled population exceed the

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appropriate clearance levels; and

(C) the selected units are sampled and evaluated for clearance according to the procedures found in paragraph (8) of this subsection.

(10) All lead-based paint waste materials from the abatement project must be disposed of in accordance with applicable federal, state, and local requirements.

(11) A written abatement report shall be prepared by a certified supervisor or project designer as required in this section. The abatement report shall include the following information:

(A) start and completion dates of abatement;

(B) the name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(C) the occupant protection plan prepared pursuant to §295.212(d)(5);

(D) the name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(E) the results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses;

(F) a detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures; and

(G) the name, address, and telephone number of the waste disposal site.

(12) Clearance levels that are appropriate for the purposes of this section are:

(A) dust wipes from floors/carpets: 100 $\mu\text{g}/\text{ft}^2$;

(B) dust wipes on window sills: 500 $\mu\text{g}/\text{ft}^2$;

(C) dust wipes on window troughs (wells): 800 $\mu\text{g}/\text{ft}^2$; and

(D) dust wipes from exterior surfaces: 800 $\mu\text{g}/\text{ft}^2$.

(e) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the standards contained in this section shall be:

(1) collected by persons certified by the department as a lead inspector or risk assessor; and

(2) analyzed by a laboratory recognized by the Environmental Protection Agency pursuant to §405(b) of the Toxic Substances Control Act (TSCA) as being capable of performing analyses for lead in paint chip, dust, and soil samples.

(f) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in subsections (b) - (d) of this section. If such sampling is conducted, the following conditions shall apply:

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- (1) composite dust samples shall consist of at least two subsamples;
- (2) every component that is being tested shall be included in the sampling; and
- (3) composite dust samples shall not consist of subsamples from more than one type of component.

(g) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual contractor, who prepared the report, for no less than three years. The certified firm or individual contractor also shall provide copies of these reports to the building owner who contracted for its services. Building owners are subject to the requirements mandated under §1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 40 Code of Federal Regulations, §745, Subpart F, "Disclosure of Known Lead-based Paint and/or Lead-based Paint Hazards Upon Sale or Lease of Residential Property."

§295.213. LEAD-BASED PAINT ACTIVITIES REQUIREMENTS.

(a) Lead-based paint activities, as defined in §295.202 of this title (relating to Definitions) shall only be conducted according to the procedures and standards contained in §295.212 of this title (relating to Standards for Conducting Lead-Based Paint Activities).

(b) No persons may offer to perform or perform any lead-based paint activity in target housing and, effective June 1, 1998, in a child-occupied facility, unless certified to perform that activity according to the procedures in §§295.205 - 295.211 of this title (relating to Texas Environmental Lead Reduction).

(c) All persons engaged in lead-based paint activities must have the department-issued certification ID card and one form of photo identification present at the worksite.

§295.214. NOTIFICATIONS.

(a) Notification requirement. The Texas Department of Health's (department) Environmental Lead Notification Section (ELNS) and the appropriate department regional office shall be notified by the certified lead firm in writing on a form specified by the department of any lead-based paint abatement activity in target housing (each individual and separate residential dwelling or each building within a multifamily dwelling complex) or child-occupied facilities. The department notification form must be filled out completely and properly. Blanks which do not apply shall be marked "N/A." The designation of "N/A" will not be accepted for references requiring identification of the work site, building description, building owner, certified lead abatement firm, and individuals required to be identified on the notification form. Any changes to the original notification will require that an amended notification be submitted.

(b) Responsibility. It is the responsibility of the certified lead firm to notify the ELNS and regional office of any initial notifications, amendments, cancellations, or emergency notifications. Each notification made to the ELNS shall contain the original signature of the certified firm's owner or an authorized agent of the firm.

(c) Timeliness of notification.

(1) ELNS notification. Written notifications of lead abatement activity must be hand-delivered, express-mailed, or postmarked at least seven working days (not calendar days) before the start of lead-based paint abatement. Notifications must be delivered by United States Postal Service, commercial delivery

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service, or by hand-delivery. Telephone facsimile (FAX) of notifications to the ELNS is not permitted. The start-date is considered to be the date when lead-based paint abatement begins.

(2) Regional office notification. In addition to the notification requirement in subsection (c)(1) of this section, a copy of the notification must be received by the regional office on the same date that the notification is mailed to the ELNS, which shall be at least seven working days prior to the start of the lead-based paint abatement. The copy of the notification may be hand-delivered, express-mailed, or faxed to the regional office.

(d) Start/Stop-date amendments. For any changes to the start and/or stop-date(s), the ELNS and the appropriate regional office shall be notified by telephone during the hours of 8:00 a.m. to 5:00 p.m. Central Standard Time (CST) prior to the original start and/or stop-date(s) as previously specified on the notification form. A written amended notification must be postmarked within 24 hours following the telephone communication with the ELNS and the regional office.

(e) Cancellations. When a lead abatement project is to be cancelled, the ELNS and the regional office shall be notified by telephone during the hours of 8:00 a.m. to 5:00 p.m. CST at least 24 hours prior to the start date, and a notification of cancellation must be submitted to the ELNS and postmarked no later than 24 hours following the telephone communication with the ELNS and regional office. The copy of the notification shall also be hand-delivered, express-mailed, or faxed to the regional office.

(f) Emergency notification. In the event of lead abatement made necessary by an unexpected or unplanned lead incident, notification will be made as soon as practicable, but not later than the following work day after the occurrence of the incident. Initial notification shall be made by telephone to the ELNS and regional office followed by formal notification on the department's notification form. Emergencies shall be documented to the extent that the need for the emergency is evident. An emergency lead abatement operation means a lead abatement operation that was not planned, but results from a sudden, unexpected event. This event, if not immediately attended to, presents a public health or safety hazard. Emergencies do not include immediate abatement work resulting solely from a lack of adequate planning for foreseeable lead abatement activity.

(g) Lead abatement notification fees.

(1) Applicability. The certified firm's owner or an authorized agent of the firm shall remit to the department a fee that is based on each child-occupied facility, individual and separate residential dwelling, or each building within a multi-family dwelling complex to be abated.

(2) Payment. An invoice for the required fee will be sent to the person submitting the notice after the notification has been received by the department. Fee amounts, address, and fund numbers are included on the form. Payment must be received no later than 60 days following the invoice date.

(3) Fees. The fee for each original notification is \$50. If a cancellation is made in accordance with subsection (e) of this section, then the original notification fee will be refunded minus a total processing fee of \$25.

(4) Nonpayment of fees. Failure to pay the required fee after an invoice has been sent shall be considered a violation and may subject the certified firm or authorized agent of the firm to administrative penalties as listed in §295.220 of this title (relating to Compliance: Administrative Penalty). The certified firm or authorized agent of the firm may also be subject to civil or criminal penalties if applicable. Governmental organizations may submit a copy of the interagency transfer document or a statement that a

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check has been requested and is in processing.

§295.215. RECIPROCITY.

(a) Terms of reciprocity. A person who is certified or licensed to perform lead-based paint activities in target housing and child-occupied facilities in another state may obtain reciprocal certification provided they are certified according to the terms of these sections prior to commencing such activities.

(b) Applicant status. All persons residing in other states, applying for any category of certification, must comply with all certification requirements which would be imposed on a Texas resident.

(c) Acceptance of qualifying documents. Out-of-state education, experience, and training can be accepted for the purpose of qualifying for Texas certification provided that they are valid and are verifiable by the department. The certification or license from another state must be from a state which has received United States Environmental Protection Agency authorization to administer and enforce a state certification and training program under Title IV of the Toxic Substances Control Act (TSCA). The burden of proof in such matters is the responsibility of the applicant; the department must reject unverifiable documentation.

§295.216. ACCREDITATION AND CERTIFICATION FEE EXEMPTION.

(a) Accreditation. Accreditation fees for training programs shall not be imposed on any federal, state, or local government, or nonprofit entities.

(b) Certification. Certification fees shall not be imposed on any federal, state or local government employee conducting any lead-based paint activity in the course of executing governmental duties. Fee-exempted certifications shall be restricted only for use in those governmental duties and certification documents issued shall state "For Official Government Use Only."

§295.217. [RESERVED]

§295.218. COMPLIANCE: INSPECTIONS AND INVESTIGATIONS.

(a) The Texas Department of Health (department) shall maintain the right to inspect or investigate the practices of any person involved in lead-based paint activities in target housing or child-occupied facilities as defined in these sections of this title (relating to Texas Environmental Lead Reduction).

(b) A department representative, upon presenting appropriate credentials, shall have the right to enter at all reasonable times any area or environment, including but not limited to any containment work area, building, construction site, storage, vehicle, training facility, or office area to inspect and investigate for compliance with these sections of this title (relating to Texas Environmental Lead Reduction), to review records, to question any person, or to locate, identify, sample, and assess the condition of lead-based paint-containing material.

(c) Advance notice of inspections or investigations by the department is not required.

(d) Authority and responsibility for the qualifications, health status, and personal protection of

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department representatives reside with the department. A department representative shall not be impeded or refused entry in the course of his official duties in accordance with these regulations by reason of any regulatory or contractual specification. A person who refuses to allow a compliance inspection shall be in violation in these sections of this title (relating to Texas Environmental Lead Reduction).

§295.219. COMPLIANCE: REPRIMAND, SUSPENSION, DECERTIFICATION, AND DEACCREDITATION.

(a) After notice to the certified or accredited person of an opportunity for a hearing in accordance with subsection (c) of this section, the Texas Department of Health (department) may reprimand the person or modify, suspend, suspend on an emergency basis, or decertify a certification or deaccredit an accreditation.

(b) The department may reprimand any certified or accredited person, or may suspend or decertify a certification or deaccredit an accreditation for:

- (1) failure to comply with any provision of the Act, any rule adopted by the Texas Board of Health, or any order issued by the department or a court;
- (2) failure to comply with applicable federal or state standards for lead-based paint activities;
- (3) failure to maintain records as required by these sections;
- (4) failure to meet the qualifications for which one holds a certification or accreditation;
- (5) fraudulently, by misrepresentation, or deceptively obtaining or attempting to obtain a certification or contract for a lead-based paint activity;
- (6) falsifying records that are required to be maintained by this section; or
- (7) failure to pay required annual certification or accreditation fees.

(c) The contested-case hearing provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, shall not apply to any enforcement action proposed to be taken under this section. The department's fair hearing procedures of the Texas Administrative Code, Title 25, Chapter 1, shall apply. Additionally, in cases where the department proposes to deny the issuance or renewal of certification or accreditation, the burden of proof shall be on the applicant to show that said applicant has met requirements or criteria for certification or accreditation.

(d) If a certification or accreditation issued under these sections has been suspended, the person(s) named in the suspension are not eligible to reapply for certification or accreditation under these sections of this title (relating to Texas Environmental Lead Reduction) for one year.

(e) If a certification issued under these sections of this title (relating to Texas Environmental Lead Reduction) has been decertified, the person(s) named in the decertification are not eligible to reapply for certification under these sections for three years.

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§295.220. COMPLIANCE: ADMINISTRATIVE PENALTY.

(a) If a person violates the Act, or a rule adopted or order issued under the Act, the Texas Department of Health (department) may assess an administrative penalty.

(b) The penalty shall not exceed \$5,000 a day per violation. Each day a violation continues will be considered a separate violation. The total penalty will be the sum of all individual violation penalties.

(c) In assessing administrative penalties, the department shall consider the:

- (1) history of previous violation(s);
- (2) seriousness of the violation(s);
- (3) hazard to the health and safety of the public; and
- (4) demonstrated good faith, and any other matter which justice may require.

(d) Individual violations may be reduced or enhanced based on the considerations listed in subsection (c) of this section, or other matters that justice may require. A maximum reduction or enhancement of 50% per individual violation may be considered, based on the facts presented to the department.

(e) A person is subject to double the initial penalty on second finding of violation of any provision of the Act or rules. Third and subsequent violations of a provision are subject to five times the initial penalty. In any case, the penalty shall not exceed \$5,000 a day per violation.

(f) Violations shall be placed in one of the following severity levels.

(1) Severity Level I. The base penalty for a Level I violation, first occurrence will not exceed \$5,000 per day, per violation. Examples of Level I violations include, but are not limited to:

(A) working without certification from the department or working with improper (forged, altered, etc,) certification;

(B) working with a suspended or decertified certification;

(C) failing to develop and implement a written occupant protection plan;

(D) providing training certificates to persons who have not attended the required training course as specified by the department;

(E) using prohibited lead abatement methods such as open-flame burning or torching, machine sanding or grinding without a high-efficiency particulate air (HEPA) vacuum tool, uncontained hydroblasting or high pressure washing, abrasive blasting or sand blasting without HEPA vacuum exhaust tools, or heat guns that operate at 1100 degrees Fahrenheit or above; or

(F) training for certification purposes without obtaining accreditation from the department.

(2) Severity Level II. The base penalty for Level II violations on a first occurrence will not exceed \$2,000 per day, per violation. Examples of Level II violations include, but are not limited to:

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- (A) failing to submit a notification to the department;
- (B) failing to conduct a training course for the specified time period;
- (C) certified supervisor not onsite or available directly through a pager or answering service; or
- (D) refusing or impeding entry to department representatives in order to conduct compliance inspections.

(3) Severity Level III. The base penalty for Level III violations on first occurrence will not exceed \$1,000 per day, per violation. Examples of Level III violations include, but are not limited to:

- (A) failing to pay the required notification fee to the department;
 - (B) submitting an improper notification to the department;
 - (C) worker certificate not on a job site;
 - (D) working with a lapsed certification;
 - (E) training provider fails to submit information to the department regarding training course schedules, or to notify the department of cancellations within the specified time periods;
 - (F) training with a lapsed training provider accreditation; or
 - (G) inspection/risk assessment report not prepared.
- (g) The person charged with the violation will be given the opportunity for a hearing conducted in accordance with the department's fair hearing procedures in Chapter 1 of this title (relating to the Board of Health).
- (h) The hearing regarding a proposed administrative penalty may be consolidated with another hearing on an administrative penalty.
- (i) If the person charged with the violation fails to request a hearing within 30 days following receipt of a notice of violation, an administrative penalty may be assessed after the Commissioner of Health has determined that a violation did occur and the amount of the penalty is warranted.